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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1121

CYRUS NICKERSON ET AL., OWNERS AND CLAIMANTS OF THE SCHOONER S. C. TRYON, APPELLANTS.

vs.

THE MERCHANTS' STEAMSHIP COMPANY, OF CHARLESTON, SOUTH CAROLINA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED OCTOBER 27, 1881.

SUPREME COURT OF THE UNITED STATES.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the district of Maryland, begun and held at the city of Baltimore, on the first Monday of April, being the fourth day of the same month, in the year of our Lord one thousand eight hundred and eighty-one.

Present, the honorable Hugh L. Bond, circuit judge, Thomas I. Morris, judge Maryland district; Archibald Sterling, esquire, attorney; John M. McClintock, esquire, marshal; James W. Chew, clerk. Among other were the following proceedings, to wit:

CLAIMANTS OF THE SCHOONER S. C. TRYON, appellants,
vs.
THE MERCHANTS' STEAMSHIP COMPANY OF Charleston, South Carolina, appellees.

2 *Libel.—Filed in the district court of the United States for the district of Maryland, on the 11th day of November,* 1879.

To the honorable Thomas I. Morris, judge of the district court of the United States for the district of Maryland:

The libel of the Merchants' Steamship Company of Charleston, South Carolina, a corporation duly incorporated, owner of the steamship Falcon hereinafter mentioned, against the schooner S. C. Tryon, her boats, tackle, apparel, and furniture, now lying in the port of Baltimore, within the admiralty and maritime jurisdiction of this honorable court, in a cause of collision, civil & maritime, alleges and articulately propounds as follows, to wit:

First. That at the time of the collision hereinafter referred to, the libellant was the owner of the said steamship Falcon.

Second. That at about half-past four p. m. on Saturday, the 8th day of November, 1879, the said steamer being properly officered and manned, tight, staunch, and in every way fitted for the voyage, left the port of Baltimore, with 8 passengers and a full cargo of merchandize on board, for a voyage from said port of Baltimore to
3 the port of Charleston, South Carolina.

Third. That about 9.45 p. m. on said 8th of November, the night being starlight, with a slight haze on the water, the wind being a seven-knot breeze from the southward, the said steamer going on her course S. by E. ¼ E. down the Chesapeake Bay, at the rate of nine knots an hour, being about 8 miles above Cove Point, having all of the lights required by law properly hung, burning brightly, and visible the prescribed distances, her second mate being on deck, in charge thereof, a full sea watch being on duty, an able seaman and experienced mariner being at the wheel, two other able seamen and experienced mariners being stationed far forward in the bow, one on each side thereof, vigilantly occupied as lookouts, in the positions most advantageous therefor, both of said lookouts almost simultaneously saw, and one of them immediately reported to said officer in charge of said steamer a red light about 1½ points over the port bow of said steamer; that said officer, as well as the man at the wheel, saw said light, and satisfying themselves that it was on a sail vessel, about a mile and a half
4 distant, coming up the bay, with a fair wind, and that there was no necessity for her to change her course, ported the helm of said

steamer, sufficiently to cause her to fall off about 1½ points to starboard, putting said steamer on a course which would have carried her a safe distance to the port of said schooner, if the latter had kept her course, as those in charge of said steamer assumed and had a right to assume that she would.

That when said vessels were within three or four hundred yards of each other, about to pass sufficiently far apart not to justify even the apprehension of danger, the said schooner being still to the port of said steamer, showing only her red light, the said schooner without any necessity or justification therefor suddenly starboarded her helm and exhibited to said steamer both of her side-lights. The helm of said steamer was thereupon immediately put hard-aport, and in a few seconds thereafter her engines were stopped, but said vessels were then so near together that the bows of said schooner, which turned out to be
5 the S. C. Tryon, struck said steamer about midships, on the port side, carrying away the smoke-stack, mizzen-mast, and all of the upper works of said steamer, cutting said steamer to the water's edge, and damaging her so seriously that in about ten minutes she sank in water about six fathoms deep; that the officers and crew of said steamer on seeing that she was about to sink devoted themselves to saving the lives of her passengers, and after transferring them to the small boats of said steamer, themselves got on board of said small boats and carried themselves and said passengers on board of said schooner, which brought them all to Baltimore.

Fourth. That said collision resulted entirely from the want of proper watchfulness, care, and skill on the part of those in charge of said schooner, and was in no degree the result of any fault on the part of those in charge of said steamer.

Fifth. That the said steamer & her freight, then pending, were totally lost & the libellant sustained damage by said collision to the amount of $40,000, for which it seeks reperation in this suit.

Sixth. That all and singular the premises are true and within
6 the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellant prays that process in due form of law may issue against said schooner S. C. Tryon, her boats, tackle, apparel, and furniture, and that a decree may be passed against them for said damages and costs.

JOHN H. THOMAS,
GEO. LEIPER THOMAS,
Proctors for Libellants.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to the marshal/ for the Maryland district, greeting:

[SEAL'S PLACE.] We command you that you attach, seize, take, and safely keep schooner S. C. Tryon, her boats, tackle, apparel, and furniture, if she be found in your district, to appear before the judge of the district court of the United States of America for the district of Maryland, at the United States court-room, in the city of Baltimore, on the first Tuesday of December next, to answer
7 unto the Merchants' Steamship Company, of Charleston, South Carolina, owner of the steamship Falcon in a cause of collision,

civil and maritime; and how you shall execute this precept you may make known to us in our district court for the district aforesaid, and have then and there this writ.

Witness the honorable Thomas I. Morris, judge of our said district court, this eleventh day of November, in the year of our Lord, one thousand eight hundred and seventy-nine.

Issued 11th day of November, 1879.

JAS. W. CHEW, *Clerk.*

Marshal's return.

Nov. 11, '79, attached and monition served. Seizure advertised.

JOHN M. McCLINTOCK,
U. S. Marshal.

Stipulation.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

8 Be it remembered, that on this 17th day of December, in the year of our Lord one thousand eight hundred and seventy-nine, before me, Robt. Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civi pending in the courts of the United States," appear Gler No. 6 South Broadway; Charles H. Stromenger, No. Square, both of Baltimore, Maryland, and James R. Potter, Rhode Island, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of seven thousand two hundred and sixty-five dollars and fifty-six cents, for the claimants of the schooner S. C. Tryon, unto The Merchants' Steamship Company, of Charleston, South Carolina, libellants, and the Pacific Mutual Insurance Company, of New York and others, petitioners; and all others who may be allowed damages by rea-

9 son of the collision mentioned in the proceedings in said cause to perform and fulfil the final order and decree of the said district court, and, in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district, and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said Merchants' Steamship Company, of Charleston, South Carolina, are libellants, and the Pacific Mutual Insurance Company, of New York, and others are petitioners, and all others who may be allowed damages by reason of the collision mentioned in the proceedings in said cause and the claimants of the said schooner S. C. Tryon, are respondents, and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattles, lands, and tenements, wheresoever found or to be found.

Acknowledged before—
[COMMISSIONER'S SEAL.]

ROBT. LYON ROGERS,
U. S. Commissioner for Maryland.

steamer, sufficiently to cause her to fall off about 1½ points to starboard, putting said steamer on a course which would have carried her a safe distance to the port of said schooner, if the latter had kept her course, as those in charge of said steamer assumed and had a right to assume that she would.

That when said vessels were within three or four hundred yards of each other, about to pass sufficiently far apart not to justify even the apprehension of danger, the said schooner being still to the port of said steamer, showing only her red light, the said schooner without any necessity or justification therefor suddenly starboarded her helm and exhibited to said steamer both of her side-lights. The helm of said steamer was thereupon immediately put hard-aport, and in a few seconds thereafter her engines were stopped, but said vessels were then so near together that the bows of said schooner, which turned out to be
the S. C. Tryon, struck said steamer about midships, on the
5 port side, carrying away the smoke-stack, mizzen-mast, and all of the upper works of said steamer, cutting said steamer to the water's edge, and damaging her so seriously that in about ten minutes she sank in water about six fathoms deep; that the officers and crew of said steamer on seeing that she was about to sink devoted themselves to saving the lives of her passengers, and after transferring them to the small boats of said steamer, themselves got on board of said small boats and carried themselves and said passengers on board of said schooner, which brought them all to Baltimore.

Fourth. That said collision resulted entirely from the want of proper watchfulness, care, and skill on the part of those in charge of said schooner, and was in no degree the result of any fault on the part of those in charge of said steamer.

Fifth. That the said steamer & her freight, then pending, were totally lost & the libellant sustained damage by said collision to the amount of $40,000, for which it seeks reperation in this suit.

Sixth. That all and singular the premises are true and within
6 the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellant prays that process in due form of law may issue against said schooner S. C. Tryon, her boats, tackle, apparel, and furniture, and that a decree may be passed against them for said damages and costs.

JOHN H. THOMAS,
GEO. LEIPER THOMAS,
Proctors for Libellants.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to the marshal for the Maryland district, greeting:

[SEAL'S PLACE.] We command you that you attach, seize, take, and safely keep schooner S. C. Tryon, her boats, tackle, apparel, and furniture, if she be found in your district, to appear before the judge of the district court of the United States of America for the district of Maryland, at the United States court-room, in the city of Baltimore, on the first Tuesday of December next, to answer
7 unto the Merchants' Steamship Company, of Charleston, South Carolina, owner of the steamship Falcon in a cause of collision,

civil and maritime; and how you shall execute this precept you may make known to us in our district court for the district aforesaid, and have then and there this writ.

Witness the honorable Thomas I. Morris, judge of our said district court, this eleventh day of November, in the year of our Lord, one thousand eight hundred and seventy-nine.

Issued 11th day of November, 1879.

JAS. W. CHEW, *Clerk.*

Marshal's return.

Nov. 11, '79, attached and monition served. Seizure advertised.

JOHN M. McCLINTOCK,
U. S. Marshal.

Stipulation.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

8 Be it remembered, that on this 17th day of December, in the year of our Lord one thousand eight hundred and seventy-nine, before me, Robt. Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appear Glenville ~~bond~~ Lowndes, No. 6 South Broadway; Charles H. Stromenger, No. 33 Jackson Square, both of Baltimore, Maryland, and James R. Potter, Providence, Rhode Island, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of seven thousand two hundred and sixty-five dollars and fifty-six cents, for the claimants of the schooner S. C. Tryon, unto The Merchants' Steamship Company, of Charleston, South Carolina, libellants, and the Pacific Mutual Insurance Company, of New York and others, petitioners; and all others who may be allowed damages by rea-

9 son of the collision mentioned in the proceedings in said cause to perform and fulfil the final order and decree of the said district court, and, in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district, and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said Merchants' Steamship Company, of Charleston, South Carolina, are libellants, and the Pacific Mutual Insurance Company, of New York, and others are petitioners, and all others who may be allowed damages by reason of the collision mentioned in the proceedings in said cause and the claimants of the said schooner S. C. Tryon, are respondents, and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattles, lands, and tenements, wheresoever found or to be found.

Acknowledged before—
[COMMISSIONER'S SEAL.]

ROBT. LYON ROGERS,
U. S. Commissioner for Maryland.

10 *Answer.—Filed 30th December*, 1879.

In the district court of the United States for the district of Maryland.
In admiralty.

THE MERCHANTS' STEAMSHIP COMPANY OF Charleston, South Carolina, libellants, and others, petitioners,
vs.
SCHOONER S. C. TRYON.

The answer of Cyrus Nickerson, Charles M. Hartley, Mary S. Conklin, Clarissa Bennett, C. E. Tuthill, N. Kaplar, Frederick D. Hughes, James Campbell, John N. Collers, Joseph P. Snelling, M. Martin, Watson Baker, C. B. Allen, James C. Goff, Joseph Baxter, Miller M. Nickerson, Obid S. Baker, Doane & Crowell, C. & J. F. Baker & Co., Foster Pierce, William B. Herrick, George S. Baker, Henry Jenkins, A. Storey & Son, Francis Raymond, & Hattie S. Butler, owners and claimants of the schooner S. C. Tryon and her freight then pending, to the libel of the Merchants' Steamship Company of Charleston, South Carolina, libellant, and others, petitioners, alleges and propound as follows:

1st. They do not know who were the owners of the Falcon nor
11 of the cargo on board of her at the time of the collision, nor the value of the Falcon, nor of the cargo, and they leave the libellants and petitioners respectively to prove the same.

2. They have no knowledge at what time the Falcon left Baltimore on the 8th day of November, 1879, what her condition was, nor how she was manned and equipped, and they leave the libellant to prove the allegations set forth in the second article of this libel.

3d. They deny that the facts of the collision are correctly set forth in the third and fourth articles of the libel and in the petitions filed in the case, and they allege the true facts of the collision to be as set forth in the next article hereof.

4th. On the night of November 8, 1879, it being starlight, with some fleeting clouds overhead, the wind southward and eastward blowing a six-and-a-half-knot breeze, the schooner S. C. Tryon being staunch and strong, was heading up the Chesapeake Bay above Cove Point on a voyage from Boston to Baltimore, on the starboard tack, her course being north by west half west, making about six knots an hour, a competent man at the wheel, a competent man on the lookout, stationed in the bow
12 of the schooner where he could best see approaching vessels, and the master being in charge of the deck, the side-lights of said schooner as required by law being properly set and brightly burning, when, a little before ten p. m., Boston time, the lookout reported the masthead light of a steamer about five miles off, bearing between one-half a point and one point on the starboard bow of the schooner; that a few minutes after this light was seen, the red light of a sailing vessel was discovered directly astern of the schooner about one hundred and fifty yards distant, & the vessel from which said red light appeared was sailing so much more rapidly than the schooner, that a collision was imminent unless the schooner fell off and gave said vessel room to pass ahead; that the schooner fell off by an order from the master for a few seconds, going ahead forty feet from the line of her original course, when she resumed her course north by west half west; that the steamer which afterwards turned out to be the Falcon, contin-

ned to bear about one point on the starboard bow of the schooner
13 and was about three miles distant after the schooner resumed her course; that about five minutes or more after getting on her course for the purpose of showing the schooner's position the master exhibited a lighted torch to the steamer, her green and red light being then visible but bearing on the schooner's starboard bow; that the steamer continued on her course bearing the same way from the schooner until she came very near when all at once, at about 10.20 p. m., Boston time, she ported her wheel and started to cross the schooner's bow; that as soon as she made this attempt a collision became inevitable, and for the purpose easing the blow and of preventing the steamer from running over the schooner, the helm of the schooner was put hard down causing the schooner to go to starboard, but the order hard down had hardly been executed when the vessels came together, the port side of the schooner's stern striking the port side of the steamer at an angle of about fifty degrees between the stem of the steamer and the stern of the schooner; that the steamer continuing to pass ahead dragged the schooner around so that before the steamer got clear, both vessels
14 were heading in the same general direction. That by reason of said collision the schooner was damaged to a very large amount, and the steamer sunk a short time after the vessel struck.

5th. That the schooner did not change her course, as alleged in the libel and petitions, and these respondents charge that if a red light was seen over the port bow of the steamer, it was the red light on the vessel that came up astern of the S. C. Tyron, or of some other vessel to the starboard of the Tyron; and they further charge that said collision was caused altogether by the negligence and want of skilful seamanship on the part of those in charge of said steamer, and without any fault on the part of those in charge of the schooner.

Wherefore they pray that the libel and petitions may be hence dismissed with costs.

BROWN & SMITH,
Proctors for Respondents.

CYRUS NICKERSON, *Master.*

Sworn to and subscribed before me this twenty-ninth day of December, in the year eighteen hundred and seventy-nine.

GEORGE MORRIS BOND,
United States Commissioner for Maryland.

15 MEMORANDUM.—The said cause was tried in the said district court and decree found for the libellants, and an appeal prayed and allowed to the circuit court.

Findings of the circuit court.—Filed 7th May, 1881.

In the circuit court of the United States, in and for the district of Maryland.

THE MERCHANTS' STEAMSHIP COMPANY, OF Charleston, South Carolina,
vs.
THE SCHOONER S. C. TRYON, &C.

Findings of facts by the court.

About 4.30 p. m. on Saturday, the 8th of November, 1879, the steamer Falcon, then owned by the libellant, being properly officered and

manned, and in every way fitted for her voyage, left the port of Baltimore, on a voyage to Charleston, South Carolina, with a valuable cargo of merchandize on board.

About 9.45 p. m. on said 8th of November, the said steamer was proceeding on her proper course, S. by E. ¼ E., down the Chesa-
16 peake Bay, about 8 miles above Cove Point, at the rate of 9 miles an hour. All of her lights required by law were properly hung, burning brightly, and visible the prescribed distances. Her second mate, a competent licensed pilot, was in charge of her, standing in the pilot-house, with the man at the wheel.

An able seaman and competent helmsman was at her wheel; a sufficient and competent crew were on duty; two other able seamen were vigilantly occupied as lookouts, stationed far forward in the bow, in the position most advantageous therefor.

About the time last mentioned both of the lookouts saw, and one of them immediately reported, a red light about one point over the port bow of the steamer.

The second mate of said steamer looked with his glasses, saw the said red light in the direction in which it had been reported, and satisfied himself that it was on board a sailing-vessel, a mile and a half or two miles off, coming up the bay with a fair wind.

The man at the wheel then also saw it. It turned out afterwards to be the red light on board of the schooner S. C. Tryon, coming up the bay, as the second mate supposed. The night was starlight;
17 there was a seven-knot breeze from the southward; fair for said schooner; and there was no necessity for her, then or thereafter, to change her course. If there had been no change in the course of either vessel, they would have passed each other in safety, each on the port sid' of the other.

As a matter of precaution, however, the helm of said steamer was immediately ported, until she fell off to S., a change of 1¼ points in her course, and causing said schooner to bear about 2¼ points over the port bow of said steamer. The second mate and lookouts of said steamer continued to watch the light of said schooner, seeing all the time only her red light, and said steamer was kept on her new course, about 1¼ points farther to the westward than her original course until said vessels were about a mile apart; only the red light of said schooner was then visible; although no further change of course on the part of said steamer seemed; then, to be necessary, as a matter of further precaution her helm was again ported a little.

When the said vessels were three or four hundred yards from each other, about to pass each other in safety, sufficiently far apart
18 not to justify even the apprehensions of danger, the said schooner, being still to the port of said steamer, and showing only her red light, suddenly, and without any justification therefor, put her helm hard a-starboard, and exhibited to said steamer both of her side lights.

As soon as her green light was visible to those on board of said steamer, it was seen by both lookouts of said steamer, and by one of them immediately reported to the second mate of said steamer.

The helm of said steamer was thereupon immediately put hard-aport, and in a few seconds thereafter her engines were stopped, but said vessels were then so near together that there was not sufficient time to reverse said engines, and the bow of said schooner struck said steamer, about midships, on her port side, cutting her down to the water's edge, and damaging her so seriously that, in about ten minutes, she sunk, with all her cargo on board, in water six fathoms deep.

The collision was entirely the result of want of proper care, skill, and seamanship on the part of those in charge of said schooner, and the improper change in her course made in consequence thereof.

.9 Those in charge of said steamer did all in their power to keep out of the way of said schooner to prevent said collision, and to lessen the consequences thereof.

The libellant and the petitioners and those in whose behalf petitions have been filed, sustained damages by said collision largely exceeding the amount of the stipulation filed for said schooner.

HUGH L. BOND,
Ct. Judge.

Findings of law by the court.

It was the duty of the steamer vigilantly to watch the movements of the schooner from the time she or either of her lights was visible to those on board of said steamer, and to take proper measures to keep out of the way of said schooner.

It was the duty of the schooner not to change her course so as to baffle the efforts of the steamer to keep out of her way.

It was the duty of the steamer, even after the schooner had improperly changed her course, to do all she could to prevent a collision and to lessen the consequences of one, if unavoidable.

HUGH L. BOND,
Ct. Judge.

20 "*Decree.*"—*Filed 7th May*, 1881.

This cause standing ready for hearing, and the proceedings and evidence therein and the arguments of the proctors for the respective parties having been read, heard, and duly considered, and the facts and law having been separately found by the court as above, and it appearing to the court that the collision therein referred to was caused solely by the fault of those in charge of the schooner S. C. Tryon, and that the libellant and petitioners are entitled to recover for the damages sustained by them in consequence thereof, it is thereupon, this 7th day of May, 1881, adjudged, ordered, and decreed that Greenville ~~Lund~~ Loud, James R. Potter, and Charles H. Stromenger, stipulators, bring into this court on or before the 17th day of May, 1881, the sum of $7,265.56 (seven thousand two hundred and sixty-five dollars and fifty-six cents), the amount of their stipulation; that Granville ~~Lund~~ Loud & Charles H. Stromenger, obligors on the appeal bond & the claimants of the said schooner S. C. Tryon, pay interest on the said sum of $7,265.56 from July 6th 1880, until the said principal sum

21 shall and also the costs of this court on both sides, the payment by said sureties not to exceed the penalty of their bond, and that proof of claims by the libellant and petitioners for damages arising from said collision may be made before Robert Lyon Rogers, esquire, commissioner of this court; that he shall make report of said claims which may be so proven before him or which have heretofore been proven before him or any other commissioner of this court, and shall make distribution of said fund among those entitled thereto, subject to the further order of this court in reference thereto.

HUGH L. BOND,
Ct. Judge.

From which said decree the said claimants of the schooner S. C. Tryon in open court here prayed an appeal to the Supreme Court of the United States to be held in the city of Washington on the second Monday of October next; and it is granted them.

MEMORANDUM.—Before the above findings of the court were made, and the passing of the aforesaid decree, the proctors for the said claimants of the schooner S. C. TRYON tendered to the court here the
22 following bill of exceptions, to wit:

Bill of exceptions.

In the circuit court of the U. S. for the fourth circuit and district of Md. On appeal from the district court of the U. S. for the district of Md., in admiralty.

MERCHANTS' STEAMSHIP CO. OF CHARLESTON, S. C., et al., libellants and appellees,
vs.
CYRUS W. NICKERSON ET AL., APPELLANTS and claimants of schooner S. C. Tryon.

Bill of exceptions and full and particular facts of the collision found by the court at the request of proctors for the claimants of the schooner S. C. Tryon.

1. The steamer Falcon, licensed to carry passengers, and having on board eight passengers and an assorted cargo, on the night of November 8th, 1879, was proceeding down Chesapeake Bay, on voyage from Baltimore to Charleston, S. C. She was tight, staunch, and strong, and her regulation lights were set and brightly burning. Her
23 second officer, John B. Foote, 52 years of age, and whose hearing was slightly defective, was in charge of the deck, and a competent seaman was at the wheel. Foote could hear well if a person spoke slowly. Two persons had been assigned as lookouts, one in the port and one in the starboard bow. John C. Jackson, the starboard lookout, was 59 years of age, and had been using glasses, when reading, for about 14 years. His eyesight, according to his opinion, had become less strong as he grew older. The starboard lookout was liable to be called away from his post to perform other duties; but Ebenezer H. Foote, the port lookout, was not liable to be called away from his post. Bothe, Ebenezer H. Foote, and Jackson testified that they were both on duty, the first in the port bow and the second in the starboard bow, at the time of and before the collision. But the court finds, as a fact, that for some little time before the collision, and up to the very moment when the vessels were in the act of coming together, Jackson had been below in the forecastle, and that he had not come on deck until he and others were hailed from the deck to come up, that a collision was going
24 to take place. The night was sufficiently clear for the lights of vessels to be seen at a great distance. About 10 p. m., the steamer Falcon, at the time being on a course south by east, one-quarter east, and making full speed of over nine knots an hour, the lookout (Foote) reported a red light about one point on the steamer's port bow and about two miles distant. This light was seen by the officer in charge of the deck, and by the man at the wheel. The steamer was kept at full speed on her course; the two vessels showing red to

red and approaching on nearly parallel lines. The master of the steamer, B. F. Kirby, was in his cabin, smoking and talking with a passenger. A few minutes before the collision he heard the officer of the deck, in reply to a hail of the lookout, sing out, "Aye, aye; I see it." Then he heard the officer give the order, "Port a little." He heard the wheel move, and then he heard the order, "Steady." And a few moments after he heard the officer say, "Confound that fellow, he has altered his course;" and the officer gave the order, "Hard aport. The master did not come out of his cabin until he heard the last order, "Hard-aport." The wheel was put hard-aport, and she fell off several points. The
25 steamer was not stopped, nor her speed slackened, nor her engines reversed until the collision had taken place. But one red light, and but one light of any kind had been seen on the port bow of the steamer, from the time the red light was first reported by the lookout up to the time that the wheel of the steamer was put hard aport, and when the collision was inevitable. The schooner S. C. Tryon struck the steamer abaft amidships at an acute angle between the stem of the steamer and the stern of the schooner. The steamer was cut through by the force of the blow, and sunk shortly afterwards. The collision occurred a few miles above Cove Point, in the Chesapeake Bay, where there was ample sea-room in every direction for vessels to pass each other.

2. The small oyster pungy Patterson & Bash, with her side lights properly set and burning, her master in charge of the deck and acting as lookout, and her mate at the wheel, on a course north by west, was proceeding up the bay to Baltimore, with a cargo of oysters. The wind was east of south, and she was winged out on the starboard
26 tack. Those in charge of her saw first the white light of the Falcon three or four miles distant, and then both her side-lights, bearing about one point over the port bow of the pungy. The steamer continued to approach in the same direction, showing all her lights, less than a point over the port bow of the pungy; and when, within four hundred yards, the steamer ported her helm and shut in her green light. The Patterson & Bash, for a considerable time, been sailing up the bay in company with the S. C. Tryon. At first she had been astern of the Tryon; and afterwards, making little the greater speed of the two vessels, she was steering up a little to the starboard of the Tryon, about two or three hundred yards distant, and at the time and before the collision the stem of the pungy was about opposite the stern of the schooner S. C. Tryon. The pungy's course was north by west, and the course of the S. C. Tryon was north by west one-half west, so that the two vessels, as they continued on their courses, were separating more and more from each other. The master of the Patterson & Bash, which latter vessel yawed somewhat, testified that immediately after he saw the green
27 light of the steamer shut out he saw the schooner S. C. Tryon suddenly starboard her wheel and alter her course; and he also testified that at the same time he heard the orders from the schooner S. C. Tryon, "Hard down," "Hard down your wheel." He said the schooner changed her course to the westward, causing the collision, and that at the time he saw this change he says he said to his man at the wheel, "Where is that d—d old schooner going? I guess she wants to try that d—d old steamer." The mate of the pungy at the wheel says that the schooner and the pungy had been for some time drawing farther and farther from each other in a line easterly and westerly; and he says that just before the collision his master said to him, "That schooner and steamer must be going to run together, from the course they are

heading now." The lights of the schooner S. C. Tryon could not be seen from the pungy, and the weather was a little hazy on the water.

3. The large three-masted schooner S. C. Tryon being tight, staunch, strong, well-manned and equipped, her side lights properly set and brightly burning, was on a voyage from Boston to Baltimore,
28 heading north by west one-half west on the starboard tack, and making about six knots an hour. Her master was on deck in charge thereof; a competent seaman was at the wheel, and a competent seaman was forward in the bow employed as lookout. These three men testified as follows: The masthead light of the steamer Falcon was seen about five miles distant, and about half a point on the schooner's starboard bow. About the same time the schooner Patterson & Bash, being a little astern, and making slightly more speed than the Tryon, the helm of the latter was ported for a few seconds, causing her to go off about 50 feet to the westward, and then she resumed her course north by west half west. The object of this manœuvre was to give the Patterson & Bash more room to pass. Shortly after the S. C. Tryon's course was resumed, bothe side-lights of the steamer were seen ahead about half a point on the starboard bow of the schooner, and about three miles distant. She was kept steady on her course; but owing to the condition of the wind and water, she like the Patterson & Bash, may have yawed a little. The steamer continued on her course,
29 all her lights being seen, about half a point off the starboard bow of the schooner S. C. Tryon; and when she was at a safe distance, in order to attract the attention of those in charge of her, the master of the S. C. Tryon exhibited from the bow of his schooner a lighted torch. The steamer still made no change of course, and when within three hundred yards she ported her helm and shut in her green light, running across the bows of the schooner, and causing the collision. The schooner was kept steadily on her course until the vessels were near together and a collision was inevitable, when her helm was put hard down; but before this order was fully executed, and before the schooner had responded to it, the vessels were together; and the court does not find, on the face of their testimony, anything to discredit their evidence.

And the claimants offered ten prayers, as follows:

1st. If the court finds that the hearing of the second officer of the steamer in charge of the deck was defective; that the eyesight
30 of Jackson, one of the alleged lookouts, was defective, then these persons were not competent to perform the duties required of them, and the steamer is liable for the collision, unless the court finds that this incompetency did not contribute to the collision, and of this there is no evidence.

2d. It was gross negligence in the master of the steamer not to come on deck as soon as he heard the exclamation, "Aye, aye, I see her," and the presumption is that if he had then come on deck, more timely precaution would have been taken to avoid the collision; and for this neglect on the part of the master the steamer is liable.

3d. Taking into consideration the character of the night and the place of the collision, the speed of the steamer was too great.

4th. Even if the red light of the Tryon was seen on the said bow of the steamer as testified to by the steamer's witnesses, still, the steamer having ample sea-room on either side, and it appearing from the
31 evidence that sailing vessels coming up the bay that night yawed more or less, it was the duty of the steamer to have taken more

timely precautions to keep out of the way, and she must be held in fault.

5th. If the court finds from the evidence that Jackson, one of the alleged lookouts on the steamer had been below for several minutes until just before the collision, that he did not come on deck until he was called nor until the collision was imminent; and if the court further finds that Jackson, and Foote, another alleged lookout, both testify that Jackson had been continuously on the lookout in the starboard bow for an hour before the collision, then no credit can be given to the testimony of either Foote or Jackson.

6th. The steamer had no sufficient lookout, and she must for that reason be held in fault.

7th. If the schooner Patterson & Bash was sailing up the bay
32 N. by W. a little astern of and to the eastward of the Tryon, and the red and green lights of the steamer were seen about one point on the port bow of the said schooner for fifteen or twenty minutes, and up to the time the steamer ported her helm, and if the Tryon was heading N. by W. $\frac{1}{2}$ W., and if the steamer up to the time of porting her helm was heading S. by E. $\frac{1}{4}$ E., then the steamer's lights were of necessity on the starboard bow of the Tryon, and the collision was caused by the steamer running across the bow of the Tryon.

8th. If the lights of the steamer were seen about one point on the port bow of the Patterson & Bash, and but one red light was seen off the port bow of the steamer at the time the lights of the Tryon should have been seen, then the red light seen from the steamer was the light of the Patterson & Bash.

9th. Inasmuch as the steamer, the Patterson & Bash, and the
33 Tryon were all moving, and inasmuch as it was dark and hazy on the water, and inasmuch as those in charge of the Patterson & Bash were compelled to watch their own vessel and the steamer, and inasmuch as both the schooners yawed somewhat, it was not possible for those in charge of the Patterson & Bash to know whether the Tryon changed her course or not; and the testimony of those in charge of the Tryon that the latter's course was not changed until the collision was inevitable, must, under the circumstances of this case, be accepted as part of the facts.

10th. The steamer was not properly manned, and she must be held liable for the collision.

Which prayers the court rejected and the claimants excepted; and the claimants pray the court to find the above facts, and to sign and seal their exception to the rejection of said prayers; which is accordingly done this 7th day of May, 1881.

The court declines to sign the above paper or to comply with
34 the above request because it does not find as a fact any alleged fact which it is therein asked to find, and which is not embraced in the facts it has already found, and on which its decree is based.

HUGH L. BOND,
Ct. Judge.

Agreement.—Filed 22d June, 1881.

In the circuit court of the United States for the district of Maryland.

CYRUS NICKERSON & OTHERS
vs.
MERCHANTS' STEAMSHIP COMPANY.

Ordered, this 22d day of June, that the penalty of the appeal bond

be, and the same is hereby, fixed at three thousand dollars, to cover as well the damages and costs in the above case as those which may arise from the detention in court, pending the appeal, balance of the proceeds of steamer Falcon, & that the appellants have ten days to give their bond.

HUGH L. BOND,
Ct Judge.

35 *Appeal bond.—Filed 28th September*, 1881.

Lond

Know all men by these presents that we, Cyrus Baker, of Boston, Horatio N. Gray and Granville ~~Lond~~, of Baltimore City, are held and firmly bound unto The Merchants' Steamship Company, of Charleston, South Carolina, in the just and full sum of three thousand dollars lawful money, to be paid unto the said The Merchants' Steamship Company, of Charleston, South Carolina, its certain attorney or assigns, to the payment of which, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this first day of July, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, in the circuit court of the United States for the fourth circuit in and for the district of Maryland, a decree was passed in a cause in said court wherein Cyrus Nickerson and others
36 were appellants, and the said The Merchants' Steamship Company, of Charleston, South Carolina, and the other petitioners mentioned therein were appellees, in favor of the said appellees, from which said decree the said appellants have prayed an appeal to the Supreme Court of the United States to be held at the city of Washington on the second Monday of October next, and to them it has been granted:

Now the conditions of the above obligation is such that if the said Cyrus Nickerson and others, appellants, shall prosecute their said appeal to effect, and shall pay as well the damages and costs in this cause as those which may arise from the detention in court pending this appeal of the balance of proceeds of the steamer Falcon, if they shall fail to make good their plea, then this obligation shall be void; otherwise to be and remain in full force and virtue.

CYRUS BAKER. [SEAL.]
HORATIO M. GRAY. [SEAL.]
GREENVILLE ~~LOND~~. [SEAL.]
Lond.

Signed, sealed and delivered in presence of—
JAS. W. CHEW.

(Endorsed:)
Bond approved.

THO'S J. MORRIS.
District Judge.

37 Thereupon it is ordered by the court here that the record and proceedings in the cause aforesaid be transmitted to the Supreme Court of the United States, and the same are transmi accordingly.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I hereby certify that the foregoing is a true transcript of the record and proceedings of the circuit court of the United States for the fourth circuit in and for the district of Maryland, in the cause aforesaid, made in pursuance of the amended 8th rule of the "Rules of the Supreme Court."

In testimony whereof I hereto set my hand and affix the seal of the said circuit court this 5th day of October, A. D. 1881.

[SEAL.]

JAS. W. CHEW,
Clk of said Circuit Court.

(Indorsement on cover:) No. 1121. Cyrus Nickerson et al., owners & claimants of the schooner S. C. Tryon, appellants, vs. The Merchants' Steamship Company of Charleston, South Carolina. Maryland C. C. U. S. Filed 27th October, 1881.

OFFICE SUPREME COURT U. S.
FILED
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Supreme Court of the U. S.

1121.

CYRUS NICKERSON *et al.*, OWNERS AND CLAIMANTS OF THE SCHOONER S. C. TRYON, *Appellants*,

vs.

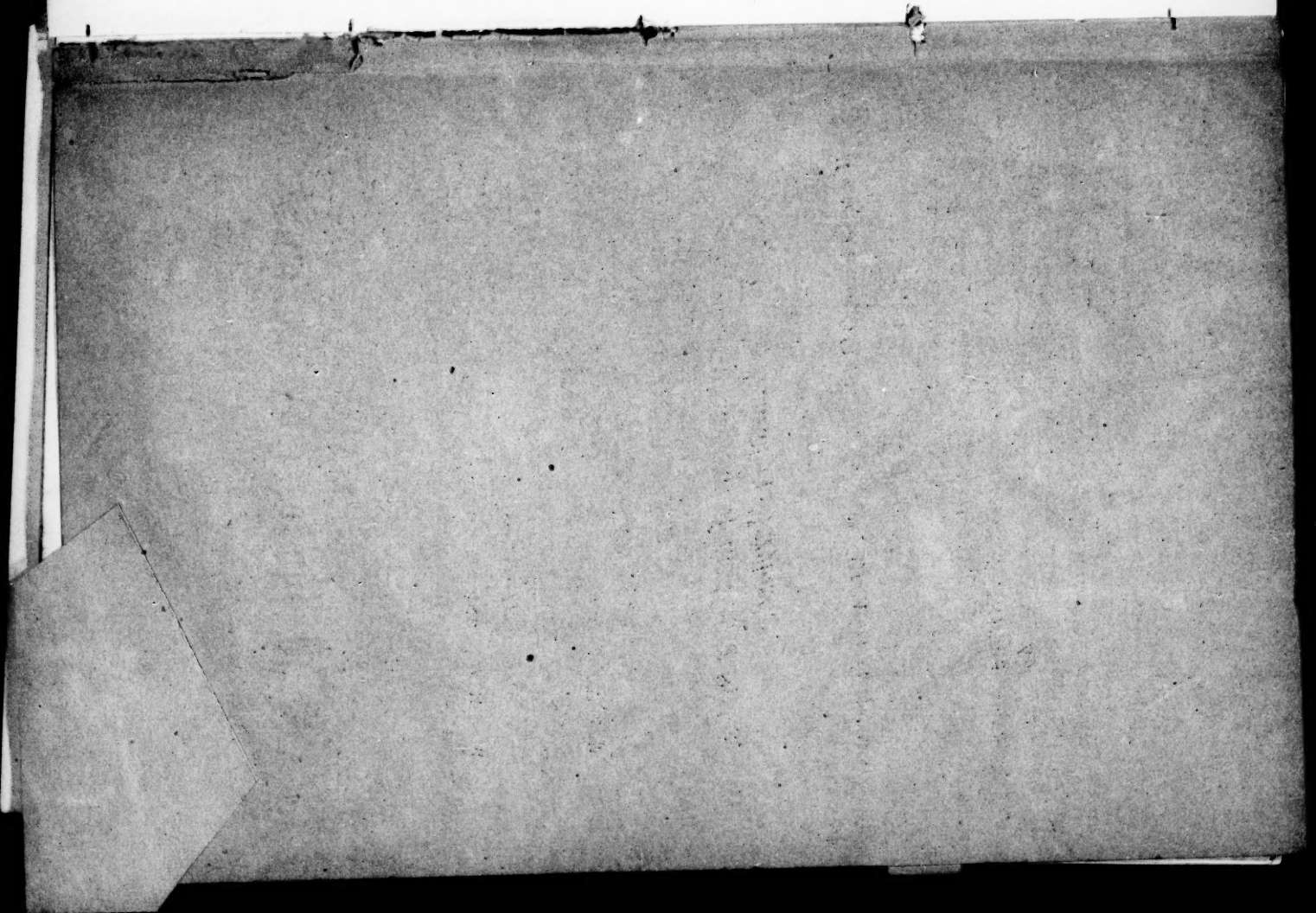
THE MERCHANT'S STEAMSHIP COMPANY, OF CHARLESTON, SOUTH CAROLINA.

Appeal from the Circuit Court of the United States, for the District of Maryland.

MOTIONS TO DISMISS AND AFFIRM AND BRIEF OF APPELLEE.

JOHN H. THOMAS,
GEORGE LEIPER THOMAS,
Counsel for Appellee.

Murphy & Co., Printers & Stationers, 182 Baltimore street, Baltimore



Supreme Court of the U. S.

1121.

CYRUS NICKERSON *et al.*, OWNERS AND CLAIMANTS OF THE SCHOONER S. C. TRYON, *Appellants.*

vs.

THE MERCHANTS' STEAMSHIP COMPANY, OF CHARLESTON, SOUTH CAROLINA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MARYLAND.

To the Honorable the Justices of the Supreme Court of the United States:

The Merchants' Steamship Company, of Charleston, South Carolina, appellee in the above case, respectfully shows, that as owner of the Steamship Falcon, the said appellee filed its libel in the District Court of the United States for the District of Maryland, in a cause of collision, civil and maritime, against the Schooner S. C. Tryon; that said Court decreed that the stipulators for said schooner bring into Court the amount of their stipulation; for the libellant; that the owners and claimants of said schooner appealed to the Circuit Court for said district; that the said Circuit Court, in deciding said cause, found the facts and conclusions of law upon which it rendered

its decree, and stated said facts and conclusions of law separately; finding, among other facts, that the libellants and petitioners, and those in whose behalf petitions had been filed, had sustained, by the collision referred to, damages largely exceeding the amount of the stipulation filed for said schooner; and thereupon decreed that the stipulators for said schooner should bring into Court the amount of their stipulation, and that the obligors on the appeal bond and the appellants should pay interest on said sum from the date of the said decree of the District Court, until paid, and all costs of both Courts, on both sides, the payment by said sureties not, however, to exceed the penalty of their bond; that what is called "Bill of Exceptions and full and particular facts of the collision found by the Court at the request of proctors for claimants of Schooner S. C. Tryon," was presented to the Judge of the Circuit Court for his signature; but that he refused to sign it, assigning, as a reason for said refusal, that the said Court did not find as a fact any alleged fact, which it was therein asked to find, which was not embraced in the facts it had already found and on which it had based its decree; that no Bill of Exceptions was signed, and that the claimants of said schooner appealed to this Court.

Wherefore the appellee now moves the Court to dismiss said appeal, because there is no Bill of Exceptions in the record, and this Court has therefore no jurisdiction in the premises.

And the appellee further moves the Court, if it shall find that it has jurisdiction in the premises, to affirm said decree of the Circuit Court, on the ground, that although the record may show that this Court has jurisdiction, it is manifest that said appeal was taken for delay only; and on the further ground, that the questions on which the jurisdiction of this Court depends are so frivolous as not to need further argument.

JOHN H. THOMAS,
GEORGE LEIPER THOMAS,
Counsel for Appellee.

APPELLEE'S BRIEF IN SUPPORT OF THE ABOVE MOTION.

1. The appellee will contend that, under the recent decisions of this Court, as to the effect of the Act of 1875, questions of law only being now reviewable in this Court, on appeal from an Admiralty Court, they must be presented, as in appeals from Common Law Courts, by Bills of Exceptions; and that as there is no Bill of Exceptions in this case, the appeal ought to be dismissed.

The Abbottsford, 98 U. S., 440.
The Benefactor, 102 U. S., 218.

2. If the record shows that this Court has jurisdiction, it presents for review the question whether the propositions of law contained in the "finding of law by the Court" on page 7, are correct. These propositions are as follows: "It was the duty of the steamer, vigilantly to watch the movements of the schooner from the time she or either of her lights was visible to those on board of said steamer, and to take proper measures to keep out of the way of said schooner.

"It was the duty of the schooner not to change her course so as to baffle the efforts of the steamer to keep out of her way.

"It was the duty of the steamer, even after the schooner had improperly changed her course, to do all she could to prevent a collision and to lessen the consequences of one, if unavoidable."

3. The above propositions are so clearly in accordance with the provisions of the Act of Congress and the uniform decisions of this Court, that they can no longer be considered open for discussion.

Revised Statutes, sec. 4,233, rules 20–23.
The Illinois, 103 U. S., 298–9.
The Stephen Morgan, 94 U. S., 603.
The Free State, 91 U. S., 200–204.
The Scotia, 14 Wall., 170, 181.
The Potomac, 8 Wall., 590, 592.
Steamship Co. vs. Rumball, 21 H., 384.

4. Although the stipulators are only liable for the amount of their stipulation, the parties who appealed and the sureties on their appeal bond are liable for the interest and costs which grew out of their contestation of the right of the appellees to that sum.

The Wanata, 95 U. S., 600.

5. These principles are so clear, and have been so often recognized by this Court, that, it is submitted, an appeal which involves only the correctness of them, must be considered as having been taken for delay only; the questions involved must be considered so frivolous as not to need further argument. The motion for an affirmance of the decree ought therefore to be granted.

Hinkley vs. Morton, 103 U. S., 764–5.

6. The appeal having been taken for delay, damages at the rate of ten per cent., in addition to interest, ought to be allowed.

Rule 23.
Pennywit vs. Eaton, 15 Wall., 382.
Amory vs. Amory, 91 U. S., 356.
Hall vs. Jordon, 19 Wall., 271, 273.
Hemmenay vs. Fisher, 20 H., 260.
Barnes vs. Hill, 13 H., 54, 56.
Lathrop vs. Johnson, 19 H., 66–69.
Kilbourne vs. State Institution, 22 H., 503.
Jenkins vs. Banning, 23 H., 455.
Prentice vs. Pickersgill, 6 Wall., 511.
Chicago City R. R. Co. vs. Bour, 6 Wall., 513, note.
The Douro, 3 Wall., 564.
Campbell vs. Wilcox, 10 Wall., 421.

JOHN H. THOMAS,
GEORGE LEIPER THOMAS,
Atts. for Appellee, in support of the motion.